

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re

CIRCUIT CITY STORES, INC., et al.,

Debtors.

Chapter 11

Case No. 08-35653 (KRH)

Jointly Administered

**RESPONSE OF CATELLUS OPERATING LIMITED PARTNERSHIP
TO LIQUIDATING TRUST'S SEVENTEENTH OMNIBUS OBJECTION
TO LANDLORD CLAIMS (REDUCTION OF PARTIALLY INVALID CLAIM)
(Claim No. 7933)**

This response is filed by Catellus Operating Limited Partnership, a Delaware limited partnership ("Catellus") to the Liquidating Trust's Seventeenth Objection to Landlord Claims (the "Objection"). In the Objection, the Liquidating Trust asserts that Catellus' Claim No. 7933 filed in the amount of \$1,903,434.65 should be partially invalidated and reduced and allowed in the sum of \$1,876,130.81.

The Liquidating Trust's objection asserts that \$2,303.84 of the \$97,329.55 claimed by Catellus as prepetition rent that was owed as of the filing of the Debtor's petition should be disallowed because it is not supported by the Debtors' books and records. In addition, the Liquidating Trust has set forth that the portion of Catellus' claim for additional damages for repairs and deferred maintenance totaling \$25,000.00 also be disallowed as not being supported by the Debtors' books and records.

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Catellus disputes this Objection and in further support of its claim submits along with this response the Declaration of Mary Hunter (*see* Exhibit A), the Property Manager for the premises leased by Catellus to the Debtor. As a response, Catellus submits the following:

Catellus owns the real estate commonly known as 43706 Christy Street, Fremont, California, consisting of approximately 34,000 sq. ft. in which Circuit City operated a retail store (hereinafter the “Premises”). The Premises were leased to Circuit City Stores West Coast, Inc. (“CC West”) originally by Catellus Development Corporation, as landlord pursuant to a lease dated December 5, 2003 (the “Lease”). As part of the terms of the Lease, Circuit City Stores, Inc. (“CC Inc.”) and Catellus entered into a certain Guaranty of Lease (“Guaranty”) by which CC Inc. guaranteed the obligations of CC West to Catellus under the Lease.

The Claimant herein, Catellus Operating Limited Partnership, a Delaware limited partnership, is the successor-in-interest to Catellus Development Corporation, a Delaware corporation, the original landlord under the Lease. Claim # 7933 is based on the Guaranty by CC Inc. of the obligations of CC West under the Lease

Prepetition Rents

Catellus is unable to determine what the basis for the Liquidating Trust’s request to disallow \$2,303.84 of the pre-petition rent claimed by Catellus. Catellus asserts that the Liquidating Trust’s review of the Debtors’ books and records is in error and asserts that the prepetition rent as set forth in the Proof of Claim should be allowed in full as part of the claim of Catellus.

Maintenance and Repair Damages

Under the terms of the Lease, CC West was obligated to return the Premises to Catellus in the same condition as when received, ordinary wear and tear excepted. The Debtor did not

take the necessary actions to restore the Premises and abandoned certain personal property and fixtures at the Premises. In addition, damage to the Premises was caused by the removal of fixtures and equipment from the Premises by the Debtor and its agents for which the Debtor was responsible under the Lease. At the time of the filing of the Proof of Claim, Catellus estimated these repair and maintenance and removal costs at \$25,000.

Since the filing of the Debtors' Proof of Claim, Catellus has completed the repair and disposal work necessitated by the Debtors' failure to comply with the Lease terms. As set forth in the Declaration of Mary Hunter, the total amount expended by Catellus for the repair, clean-up and maintenance items that were the obligation of the Debtor under the Lease was \$37,300.00. Catellus requests that the additional amount be allowed as an amendment to its claim.

Catellus contends that these additional items are a proper claim against the Debtor that is not subject to the Section 502(b)(6) landlord's cap as was determined by this Court in *In re Best Products Company, Inc.*, 229 B.R. 673 (Bankr. E.D. Va. 1998).

WHEREFORE, Catellus requests that the Court deny the Liquidating Trust's objections to Catellus' Claim No. 7933 and allow that claim in the amended amount of amount of \$1,915,734.65.

Dated: April 4, 2011

CHRISTIAN & BARTON, LLP

/s/ Jennifer M. McLemore

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CERTIFICATE OF SERVICE

I, Jennifer M. McLemore, hereby certify that on the 4th day of April 2011, a true and correct copy of the foregoing Response of Catellus Operating Limited Partnership to Liquidating Trust's Seventeenth Omnibus Objection to Landlord Claims (Reduction of Partially Invalid Claim) (Claim No. 7933) – Administrative Claim) has been served electronically using the ECF system on all registered users of the CM/ECF system who have filed notices of appearance in this matter.

/s/ Jennifer M. McLemore
Jennifer M. McLemore